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No. 80-1481

In the Supreme Court of the United States

OCTOBER TERM 1980

BREAD POLITICAL ACTION COMMITTEE, ET AL.,
APPELLANTS,

v.

FEDERAL ELECTION COMMISSION, ET AL.,
APPELLEES.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, EN BANC

MOTION OF THE FEDERAL ELECTION COMMISSION TO DISMISS THE APPEAL OR IN THE ALTERNATIVE TO AFFIRM

CHARLES N. STEELE *
General Counsel

KATHLEEN IMIG PERKINS
Assistant General Counsel

DEBORAH E. MCFARLAND
MIRIAM AGUIAR
Attorneys

Attorneys for
FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463
(202) 523-4143

* Counsel of Record

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QUESTIONS PRESENTED

(1) Whether a right of appeal to this Court is unavailable to appellants who are not "the Commission, the national committee of any political party or any individual eligible to vote" as required to invoke 2 U.S.C. § 437h.

(2) Whether, if an appeal does lie, this Court should summarily affirm the *en banc* decision of the court of appeals that 2 U.S.C. § 441b(b)(4)(D) is consistent with the first and fifth amendments of the Constitution of the United States.*

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* The other parties to this proceeding include: National Lumber and Building Material Dealers Association ("NLBMDA"), Lumber Dealers Political Action Committee ("LuDPAC"), National Restaurant Association ("NRA") and Restaurateurs Political Action Committee ("RPAC") as plaintiffs/appellants. Named as other defendants are: Francis R. Valeo, Secretary of the United States Senate and Ex-Officio member of the Federal Election Commission, Edward Henshaw, Clerk of the U.S. House of Representatives and Ex-Officio member of the Commission and Vernon W. Thomson, Thomas E. Harris, Neil Staebler, William Springer, Robert O. Tiernan and Joan D. Aikens, as members of the Commission, and Hon. Griffin Bell, as Attorney General. By order of June 10, 1977, the Attorney General was dismissed as a defendant. Messrs. Staebler and Springer are no longer Commission members; Messrs. John W. McGarry and Frank P. Reiche are currently members of the Commission. William F. Hildenbrand is currently the Secretary of the Senate and Ex-Officio member of the Commission, rather than Francis R. Valeo.

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ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, EN BANC

MOTION OF THE FEDERAL ELECTION COMMISSION TO DISMISS THE APPEAL OR IN THE ALTERNATIVE TO AFFIRM

Appellee Federal Election Commission ("the Commission" or "FEC") moves to dismiss this appeal because none of the appellants are among the categories of eligible plaintiffs authorized by Congress to invoke the appellate jurisdiction of this Court, or the jurisdiction of any federal court, under 2 U.S.C. § 437h.[1] In the alternative, if an appeal does lie

[1] This provision is § 310 of the Federal Election Campaign Act of 1971 (the "Act" or "FECA"), Pub. L. No. 92-225, 86 Stat. 3 (1972), as amended by the Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263 (1974), by the Federal Election Campaign Act Amendments

pursuant to 2 U.S.C. § 437h, the Court should affirm the decision below because the questions presented were correctly decided.

OPINIONS BELOW

The January 12, 1979, opinion of a panel of the United States Court of Appeals for the Seventh Circuit, overruling the district court's decision not to certify under § 437h and remanding the case for fact-finding and certification, is published at 591 F.2d 29 (7th Cir. 1979). The December 19, 1979, order of the United States District Court for the Northern District of Illinois certifying constitutional questions to the court of appeals is not published. The December 5, 1980, decision of the United States Court of Appeals for the Seventh Circuit is reported at 635 F.2d 621 (7th Cir. 1980) (en banc) and appears at Appendix A of appellants' Jurisdictional Statement ("J.S. App. at ——").

JURISDICTION

Appellants rely upon 2 U.S.C. § 437h as the basis for this Court's jurisdiction to hear and decide this case.

STATUTES INVOLVED

This case concerns several provisions of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C.

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of 1976, Pub. L. No. 94-283, 90 Stat. 475 (1976), by the Federal Election Campaign Act Amendments of 1977, Title V, Sec. 502, Pub. L. No. 95-216, 91 Stat. 1655 (1977), and by the Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339 (1980). The relevant provisions of the Act are codified in Title 2, United States Code.

§ 431 *et seq.* Specifically, 2 U.S.C. § 437h is at issue with regard to the jurisdiction of this Court, and appellants challenge 2 U.S.C. § 441b(b)(4)(D) on constitutional grounds. For the Court's convenience, 2 U.S.C. §§ 437h, 441b are set forth in the Appendix to this motion.

STATEMENT OF THE CASE

This case began when plaintiffs filed a complaint on April 4, 1977, in the United States District Court for the Northern District of Illinois seeking an injunction against the enforcement of 2 U.S.C. § 441b(b)(4)(D) or, alternatively, the certification of the constitutionality of that provision to the court of appeals under 2 U.S.C. § 437h.[2] The district court declined to issue an injunction because plaintiffs had not demonstrated a probability of success on the merits and denied the motion for certification because plaintiffs are not among those eligible to invoke the extraordinary procedures of 2 U.S.C. § 437h. Plaintiffs' request for interlocutory appeal on the question of the proper construction of § 437h was granted by the court of appeals under 28 U.S.C. § 1292(b) on December 19, 1977.

After concluding that § 437h is available to any and all potential plaintiffs, the court of appeals remanded the case to the district court to: "(1) identify the constitutional and fact issues raised by the complaint; (2) take whatever evidence the court finds necessary to a decision of those issues; (3) make findings of fact; and (4) certify the assembled record

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[2] 2 U.S.C. § 441b(b)(4)(D) was enacted as section 321 (b)(4)(D) of the Federal Election Campaign Act Amendments of 1976, *supra*.

and the constitutional questions arising therefrom to this court for decision pursuant to § 437h." 591 F.2d at 36.

Denying the Commission's opposition to certification, the district court certified four constitutional questions[3] to the *en banc* court of appeals on December 19, 1979. On December 5, 1980, the court of appeals *en banc* answered the questions so as to uphold the challenged provision. With regard to § 437h, the court declined to overrule the earlier decision of the panel concerning the eligibility of appellants to invoke § 437h, J.S. App. at 6; concluded that because the parties disagreed as to the meaning and constitutionality of § 441b(b)(4)(D), any argument concerning a lack of an Article III case or controversy was frivolous and had been decided in *Buckley* v. *Valeo*, 424 U.S. 1 (1976), J.S. App. at 7; and, held that because the word "appropriate" modifies "actions" and not "questions of constitutionality", review under § 437h is not limited to facial challenges. J.S. App. at 8.

ARGUMENT

I. APPELLANTS HAVE NO RIGHT OF APPEAL TO THIS COURT UNDER § 437h BECAUSE CORPORATIONS AND THEIR SEPARATE SEGREGATED FUNDS ARE NOT AMONG THOSE ENUMERATED BY CONGRESS AS ELIGIBLE TO INVOKE § 437h.

This Court's appellate review of the seventh circuit's decision is sought pursuant to 2 U.S.C. § 437h. The Commission submits, however, that appellants may not utilize § 437h to require this Court to review the decision below.

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[3] Appellants appeal to this Court the decision of the court of appeals with regard to only three of the certified questions.

Section 437h is a precise provision which establishes a special but limited procedure for pre-enforcement judicial consideration of certain constitutional challenges to the Act. Specifically, § 437h is limited by its terms to appropriate actions filed by the "Commission, the national committee of any political party, or any individual eligible to vote in any election for the office of President." Plaintiffs herein, two incorporated trade associations and three separate segregated funds, are not among those enumerated by Congress as eligible plaintiffs. Therefore, they may not utilize § 437h as a jurisdictional base to require appellate review by this Court.

The legislative history of FECA's judicial review provisions supports the construction of § 437h as applicable only to those plaintiffs enumerated by Congress. Where Congress sought broad access to federal courts for review under FECA, it employed the traditionally broad language often used in jurisdictional provisions.[4] Thus, all persons subject to Commission enforcement actions have the opportunity for *de novo* review in federal district court, 2 U.S.C. § 437g(a)(6), and "[a]ny party aggrieved" by the Commission's dismissal of a complaint or by a failure of the Commission to act timely has a right of action against the Commission in federal court. 2 U.S.C. § 437g(a)(8).

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[4] *See, e.g.*, 15 U.S.C. § 77i(a) (1970); 16 U.S.C. § 8251(b) (1970); 47 U.S.C. § 402(b) (1970); 49 U.S.C. § 1486(a) (1970); and 33 U.S.C. § 921(b) (1964) for examples of statutory provisions authorizing suit by persons or parties "aggrieved," "any party in interest" or a party with a "substantial interest."

In § 437h, however, Congress specifically enumerated the plaintiffs eligible to utilize the extraordinary procedures of this provision and to invoke pre-enforcement review of the constitutionality of FECA.[8] Thus, Congress limited jurisdiction under § 437h to actions by the "Commission, the national committee of any political party, and individuals eligible to vote. . . ." To read § 437h more broadly is to extend the extraordinary procedures to "parties aggrieved" or "any interested person", precisely what Congress did not do.

While the court declined to overrule the earlier panel decision as to statutory standing, several other courts have concluded that the statutory grant must be narrowly read. Thus, the district court in *Buckley* v. *Valeo*, 387 F. Supp. 135 (D.D.C. 1975) read § 437h as granting standing only to the specified parties. 387 F. Supp. at 142 n.14. More recently, the United States District Court for the District of Columbia recognized that:

> [A]ccess to court pursuant to § 437h(a) was by its terms limited to "the Commission, the national committee of any political party, or any individual eligible to vote in any election for the office of President. . . ."

Martin Tractor v. *Federal Election Commission*, 460 F. Supp. 1017, 1019 (D.D.C. 1978), *aff'd* 627

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[8] Specification of particular plaintiffs eligible to invoke the jurisdiction of a federal court is not uncommon. *See e.g.*, 15 U.S.C. § 78y(a) (1976) and 39 U.S.C. § 3628 (1976) (party to the proceedings); 15 U.S.C. § 45(c) (1976) (person required to cease and desist). *See also Consumer Federation of America* v. *Federal Trade Commission*, 515 F.2d 367 (D.C. Cir. 1975); *Wallach* v. *Securities and Exchange Commission*, 206 F.2d 486 (D.C. Cir. 1953).

F.2d 375 (D.C. Cir. 1980), *cert. denied sub nom. National Chamber Alliance for Politics* v. *Federal Election Commission*, —— U.S. ——, 100 S.Ct. 360 (1980). The court also limited actions ". . . appropriate for vindication in a special declaratory judgment action under § 437h . . . to those filed by eligible voters who put . . . at issue . . . their rights as voters . . particularly where, under the statutory scheme there is an alternative process for resolution of the substantive issue. . . ." *Id.*[6] And, on a motion to intervene, the United States District Court for the Eastern District of New York concluded:

> To construe [section 437h] as granting movants an unconditional right to intervene would require this court to permit every eligible voter in the United States the same right. Congress could hardly have contemplated such a result in a statute designed for expedited judicial review.

Republican National Committee v. *Federal Election Commission*, 461 F. Supp. 570 (S.D.N.Y. 1978).

In sum, Congress has limited the availability of the extraordinary pre-enforcement procedures of § 437h to explicit, specified parties. Lower federal courts have recognized the narrowness of the provision. None of the appellants herein are among those enumerated. Congress's limitation on such an extraordinary procedure must be respected, not extended to encompass all parties affected by the Act. Because appellants are not eligible plaintiffs under § 437h,

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[6] The court of appeals in *Martin Tractor* found it unnecessary to reach the scope or applicability of the standing issue, but noted the conflict between the district court ruling and the decision of the panel in the instant case. 627 F.2d 378 n.6, 392.

they may not invoke the appellate jurisdiction of this Court pursuant to that provision. Thus, the appeal should be dismissed for lack of jurisdiction.[7]

II. IN THE ALTERNATIVE, IF AN APPEAL LIES UNDER § 437h, THE COURT SHOULD SUMMARILY AFFIRM THE DECISION BELOW BECAUSE THE QUESTIONS CERTIFIED WERE PROPERLY DECIDED BY THE *EN BANC* COURT.

Appellants ask this Court to overturn the decision rendered by the *en banc* court of appeals which upheld an exception to the long-standing prohibition on corporate and labor organization contributions and expenditures in connection with federal elections, 2 U.S.C. § 441b.[8] Appellants do not challenge the general prohibition—2 U.S.C. § 441b(a)—which makes unlawful the activity in which they wish to engage.[9]

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[7] The Commission does not ask this Court to view appellants' jurisdictional statement as a petition for certiorari, denying same, since jurisdiction was improper in the district court and the appellate court lacked jurisdiction on certification.

[8] The first congressional effort in this area was directed only at corporations. The Act of January 26, 1907 (the Tillman Act), 34 Stat. 864 (1907), prohibited corporations from making "a money contribution in connection with" any federal election. The evolution of 2 U.S.C. § 441b is set forth, through the 1971 legislation, in *Pipefitters Local Union No. 562* v. *United States*, 407 U.S. 385 (1972); *United States* v. *International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO)*, 352 U.S. 567 (1957); *United States* v. *Congress of Industrial Organizations*, 335 U.S. 106 (1948).

[9] Numerous federal courts have held the prohibition constitutional in the context of specific cases. *California Medical Association* v. *Federal Election Commission*, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 9127 (9th Cir. May 23, 1980) *possible jurisdiction postponed* No. 79-1952 (Oct. 6, 1978); *Federal*

Rather, appellants contend that the exception, 2 U.S.C. § 441b(b)(4)(D), unconstitutionally infringes upon first and fifth amendment rights.

The seventh circuit's *en banc* decision correctly recognized the challenged section as an exception to an unchallenged prohibition. The court correctly concluded that the exception did not unconstitutionally infringe upon appellants' first amendment interests nor was it unconstitutional under the fifth amendment. The court, in reaching its decision, properly applied the traditional analysis set out by this Court in first and fifth amendment challenges. Thus, if this Court concludes that a right of appeal exists, it should summarily affirm the decision below.

A. The court of appeals correctly held that 2 U.S.C. § 441b(b)(4)(D) does not impermissibly infringe appellants' right of assembly.[10]

The court below correctly concluded that 2 U.S.C. § 441b(b)(4)(D), in excluding certain contributions

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Election Commission v. *Lance*, 635 F.2d 1132 (5th Cir. 1981) (en banc); *United States* v. *Chestnut*, 533 F.2d 40, 51 n.12 (2d Cir. 1976), *cert. denied*, 429 U.S. 829 (1976); *United States* v. *Boyle*, 482 F.2d 755 (D.C. Cir. 1973), *cert. denied*, 414 U.S. 1076 (1973); *United States* v. *Pipefitters Local Union No. 562*, 434 F.2d 1116 (8th Cir. 1970), *adhered to en banc*, 434 F.2d 1127, *rev'd on other grounds*, 407 U.S. 385 (1972); *Federal Election Commission* v. *National Right to Work Committee*, 501 F. Supp. 422 (D.D.C. 1980), *appeal docketed*, Nos. 80-1487, 80-1488 (D.C. Cir. May 7, 1980); *Federal Election Commission* v. *Weinsten*, 462 F. Supp. 243 (S.D.N.Y. 1978); *United States* v. *Clifford*, 409 F. Supp. 1070, 1072 (E.D.N.Y. 1976); *United States* v. *Brewers' Association*, 239 F. 163 (W.D. Pa. 1916).

[10] The district court rejected the question submitted by plaintiff and certified instead:

> Whether 2 U.S.C. § 441b(b)(4)(D), both facially and as applied, infringes plaintiffs' right of assembly guaranteed

and expenditures from the prohibition of § 441b(a), does not impermissibly infringe upon rights protected by the first amendment. Indeed, applying appropriate first amendment analysis, the court concluded that the restrictions imposed by § 441b serve an overriding governmental interest:

> The transcendent legislative objective served by the Federal Election Campaign Act is the elimination of corruption and the appearance of corruption in the federal election process. *Id.* The restrictions imposed by Section 441b of the Act on labor organizations and corporations, including incorporated trade associations, are designed to serve both this objective and the additional objective of protecting individuals from economic coercion. *United States* v. *United Automobile Workers*, 352 U.S. 567, 570-584; *United States* v. *Congress of Industrial Organizations*, 335 U.S. 106, 113.

J.S. App. at 10. *See also Democratic Party of the United States of America* v. *LaFollette*, —— U.S. ——, 49 U.S.L.W. 4178, 4182 (February 25, 1981). And, the court concluded that the challenged provision "is a very narrowly drawn aspect of a statutory scheme carefully designed to balance a compelling governmental interest and jealously guarded First Amendment freedoms." J.S. App. at 15. Indeed, the court found that:

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by the First Amendment to the Constitution of the United States of America.

The court of appeals concluded that it "should address the prior restraint issue since plaintiffs raised it below and Judge Marshall at least referred to the First Amendment in his first question to us." J.S. App. at 9 n.7.

> [n]othing in § 441b(b)(4)(D) limits the expression or dissemination of political ideas and information either to individuals described in the Section or to any other individual. Indeed there has been no showing that this provision has had or could have any prior restraining effect whatsoever on the free flow of political information and opinion by trade associations or their political committees. . . . Nor does § 441b(b)(4)(D) prohibit . . . trade associations from joining the shareholders and executive or administrative employees of its member corporations to it in common cause. They are free to solicit any individual . . . to join their trade associations.

J.S. App. at 12-13.

Thus, the court of appeals properly recognized that the compelling governmental interests served by the statutory prohibition override any alleged infringement on first amendment freedoms. The court correctly concluded that § 441b(b)(4)(D) does not impermissibly infringe appellants' right of assembly.

B. 2 U.S.C. § 441b(b)(4)(D) does not violate the due process clause of the fifth amendment.[11]

The court of appeals also properly upheld § 441b(b)(4)(D) against an equal protection challenge under the fifth amendment's due process clause. J.S. App. at 16-20. First, the court found that appellants' argument was "largely premised . . . on a misreading of the statute." J.S. App. at 17. That

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[11] The second question certified to the court of appeals was:

> Whether 2 U.S.C. § 441b(b)(4)(D), both facially and as applied, deprives plaintiffs of liberty without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

is, appellants claimed that § 441b(b)(4)(D) prohibited them from soliciting anyone other than the shareholders or executive and administrative employees of their member corporations, individuals identified in the challenged provision. This premise, the court concluded, is unsupported by the statute and the regulations and "is simply not correct." J.S. App. at 17. Rather, appellants may, consistent with FECA, solicit contributions from their stockholders, employees, and members pursuant to § 441b(b)(4)(A), (B), and (C)[12] as well as from employees of their corporate members under § 441b(b)(4)(D). Thus, the court noted that:

> to the extent that trade associations are treated differently from other corporations and other membership organizations, the difference lies in the fact that trade associations are not limited as are the others to soliciting their own shareholders, employees or members.

J.S. App. at 18 (footnote omitted).

Although appellants were not able to establish that they are treated differently by the statute in any but a beneficial way, the court also concluded that any dissimilar treatment "follows from the rather obvious facts that each of the different groups has a different structure and a different kind of constituency and that each requires somewhat different regulation to curb abuses the Act was intended to halt." J.A. App. at 18. Finally, when comparing labor organizations

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[12] The Commission submitted below that because plaintiffs had never utilized any of the solicitation opportunities available pursuant to § 441b(b)(4)(A), (B), or (C) they were unable to establish an Article III injury flowing from § 441b(b)(4)(D).

and trade associations, the court found that "the relationship that obtains between a trade association and the employees of its member corporations differs significantly from that existing between union members and their unions." J.S. App. at 19. As this Court itself has recognized, "[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike. . . ." *Buckley* v. *Valeo*, 424 U.S. at 97-98.

Thus, the court determined that appellants' argument "runs afoul" by their "failure to demonstrate" that they are "similarly situated." J.S. App. at 20. The court correctly answered in the negative the second question certified by the district court. This Court should summarily affirm the decision of the court of appeals.

C. Section 441b(b)(4)(D) is not overbroad.[13]

The court of appeals also correctly answered the district court's third question in the negative. The court noted that appellants did not claim that the phrase "soliciting contributions" was vague. J.S. App. at 21. Rather, appellants claimed that the phrase was so overly broad as to permit the Commission to issue inconsistent advisory opinions. The court below concluded that the advisory opinions proffered by appellants were well within the parameters

[13] The third question certified by the district court stated:

> Whether the failure of the Federal Election Campaign Act, as amended, 2 U.S.C. § 431, *et seq.*, to define the term "solicitation" infringes plaintiffs' right of assembly guaranteed by the First Amendment to the Constitution of the United States or deprives plaintiffs of liberty without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

of reasonableness and not inconsistent. J.S. App. at 22. The court unanimously held that Congress's use of the phrase "solicit contributions" did not render the statute overbroad or unconstitutionally vague.

CONCLUSION

The Commission submits that this case should be dismissed on the ground that appellants may not invoke the appellate jurisdiction of this Court under 2 U.S.C. § 437h. In the alternative, the Court should summarily affirm the decision below because the *en banc* court of appeals correctly decided the substantive issues raised, applying principles established by this Court.

Respectfully Submitted,

CHARLES N. STEELE
General Counsel

KATHLEEN IMIG PERKINS
Assistant General Counsel

DEBORAH E. MCFARLAND
MIRIAM AGUIAR
Attorneys

Attorneys for
FEDERAL ELECTION COMMISSION

APRIL 1981

APPENDIX

2 U.S.C. § 437h

(a) *Actions, including declaratory judgments, for construction of constitutional questions; eligible plaintiffs; certification of such questions to courts of appeals sitting en banc.* The Commission, the national committee of any political party, or any individual eligible to vote in any election for the office of President may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this Act. The district court immediately shall certify all questions of constitutionality of this Act to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

(b) *Appeal to Supreme Court; time for appeal.* Notwithstanding any other provision of law, any decision on a matter certified under subsection (a) of this section shall be reviewable by appeal directly to the Supreme Court of the United States. Such appeal shall be brought no later than 20 days after the decision of the court of appeals.

(c) *Advancement on appellate docket and expedited disposition of certified questions.* It shall be the duty of the court of appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter certified under subsection (a) of this section.

2 U.S.C. § 441b

(a) It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or any officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by the corporation, national bank, or labor organization, as the case may be, prohibited by this section.

(b) (1) For the purposes of this section the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(2) For purposes of this section and section 79*l*(h) of title 15, the term "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section, but shall not include—

(A) communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject;

(B) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families; and

(C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock.

(3) It shall be unlawful—

(A) for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in any commercial transaction;

(B) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee of the political purposes of such fund at the time of such solicitation; and

(C) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee, at the time of such solicitation, of his right to refuse to so contribute without any reprisal.

(4) (A) Except as provided in subparagraphs (B), (C), and (D), it shall be unlawful—

(i) for a corporation, or a separate segregated fund established by a corporation, to solicit contributions to such a fund from any person other than its stockholders and their families and its executive or administrative personnel and their families, and

(ii) for a labor organization, or a separate segregated fund established by a labor organization, to solicit contributions to such a fund from any person other than its members and their families.

(B) It shall not be unlawful under this section for a corporation, a labor organization, or a separate segregated fund established by such corporation or such labor organization, to make 2 written solicitations for contributions during the calendar year from any stockholder, executive or administrative personnel, or employee of a corporation or the families of such persons. A solicitation under this subparagraph may be made only by mail addressed to stockholders, executive or administrative personnel, or employees at their residence and shall be so designed that the corporation, labor organization, or separate segregated fund conducting such solicitation cannot determine who makes a contribution of $50 or less as a result of such solicitation and who does not make such a contribution.

(C) This paragraph shall not prevent a membership organization, cooperative, or corporation without capital stock, or a separate segregated fund established by a membership organization, cooperative, or corporation without capital stock, from soliciting contributions to such a fund from members

of such organization, cooperative, or corporation without capital stock.

(D) This paragraph shall not prevent a trade association or a separate segregated fund established by a trade association from soliciting contributions from the stockholders and executive or administrative personnel of the member corporations of such trade association and the families of such stockholders or personnel to the extent that such solicitation of such stockholders and personnel, and their families, has been separately and specifically approved by the member corporation involved and such member corporation does not approve any such solicitation by more than one such trade association in any calendar year.

(5) Notwithstanding any other law, any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to a separate segregated fund established by a corporation, permitted by law to corporations with regard to stockholders and executive or administrative personnel, shall also be permitted to labor organizations with regard to their members.

(6) Any corporation, including its subsidiaries, branches, divisions, and affiliates, that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions, shall make available such method, on written request and at a cost sufficient only to reimburse the cor-

poration for the expenses incurred thereby, to a labor organization representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates.

(7) For purposes of this section, the term "executive or administrative personnel" means individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities.

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